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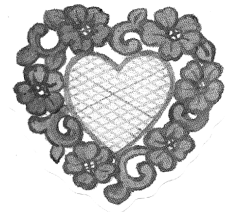
Happy Valentine's Day



"Tip of the Month"

ASSET PROTECTION VEHICLES

A **revocable living trust** can help avoid probate, but it is usually not useful for protecting assets from creditors. That is because the trust Grantor is usually also the Trustee, in charge of all the assets. The trust is revocable, which means the Grantor has complete control over all the assets. The Grantor's creditors can usually reach those assets if needed.

A **family limited partnership (FLP)** can be more effective to protect assets. The FLP is an entity that is filed with the State. Its limited partners are often the children, holding a large percentage share of the partnership assets. Limited partners are silent partners who are not allowed to participate in management. They have no vote. The general partners control the assets. In an FLP, general partners are often mom and dad, or maybe just mom, holding a small share percentage.

A **limited liability company (LLC)** can be set up just like an FLP. The LLC can have silent, non-voting members (the kids, or other beneficiaries) holding a big share. The managing members (mom and dad), holding a small share, manage the LLC assets. An LLC with more than one member is usually governed by partnership law, just like an FLP.

Partnership law is why the FLP and LLC can be effective asset protection vehicles. That is because the LLC and FLP agreements can say that no shares can be transferred, pledged or liened without consent of the members or partners. In addition, partnership assets usually cannot be attached.

A **charging order** is usually all a creditor can get when seeking an attachment of partnership assets. This might give the creditor the rights of an assignee of a share, but no vote and no control over the assets. The creditor would have the right to receive any income on that share that the general partners or managers might declare in their discretion. If, in their discretion, partners decide not to distribute the income, the tax on that income must still be paid by the creditor. This can be a significant disincentive for a creditor considering whether to seek an attachment.

The **Uniform Fraudulent Transfer Act (UFTA)** has been adopted in New Hampshire and every other state. It is designed to protect creditors from debtors who try to put assets beyond their reach to evade debt. In appropriate circumstances, the UFTA can look back four years for a fraudulent transfer in avoidance of creditors.

The asset protection vehicles discussed above are not for everyone, but they can be helpful in the right case. If you would like to learn more about estate planning or asset protection planning, give us a call at 668-1971 or contact us by e-mail at *Meslaw @ aol.com.*

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